

AMENDED IN SENATE APRIL 23, 2009

**SENATE BILL**

**No. 476**

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**Introduced by Senator Correa**

February 26, 2009

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An act to amend ~~Sections 21083, 21091, and 21177 of, and to add Section 21080.34 to, Section 21177 of~~ the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

SB 476, as amended, Correa. Environment: California Environmental Quality Act: noncompliance allegations: public comment.

~~(1) The~~

*The* California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA provides for a public review period for the public to review a draft EIR, proposed negative declaration, or proposed mitigated negative declaration. CEQA requires a lead agency to evaluate and respond to comments on a draft EIR, proposed negative declaration, or proposed mitigated negative declaration made during the public review period and authorizes a lead agency to evaluate and respond to comments made on a draft EIR when the comments are submitted after

the public review period. CEQA requires an action or proceeding alleging noncompliance with its requirements to be based on grounds that were presented to the public agency orally or in writing by any person during the public comment period provided under CEQA or prior to the close of the public hearing on the project before the issuance of the notice of determination.

~~This bill would allow an action or proceeding to be brought based on alleged grounds of noncompliance with CEQA raised after the public comment period if the person can demonstrate that the alleged grounds were not known and could not have been known with reasonable diligence at the time the EIR, negative declaration, or mitigated negative declaration was made available for public review, and therefore could not have been presented prior to the close of the comment period and the person raised the alleged grounds.~~ *This bill instead would prohibit an action or proceeding from being brought based on alleged grounds of noncompliance with CEQA unless the alleged grounds for noncompliance were presented to the public agency orally or in writing by any person during the public comment period provided under CEQA or prior to the close of the public hearing on the project before the issuance filing, rather than issuance, of the notice of determination.*

~~The bill would prohibit a lead agency from considering comments received after the close of the public review period, except in this case in which the bill would authorize alleged grounds of noncompliance with CEQA to be raised after the public comment period. The bill would limit the evaluation of the cumulative effect of a project in an EIR to the information available at the time of publishing of the notice of preparation.~~

~~(2) CEQA exempts certain specified projects from its requirements.~~

~~This bill would exempt from its requirements projects related to the installation of environmental enhancement on or within a property or structure if the enhancement does not increase the square footage of the property or structure. Because a lead agency would be required to determine whether a project is exempt under this provision and to provide certain notice regarding its determination, the bill would impose a state-mandated local program.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: ~~yes~~-no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 21080.34 is added to the Public Resources~~  
2     ~~Code, to read:~~

3     ~~21080.34. This division does not apply to an approval or a~~  
4     ~~permit that may be required when an owner or occupant of an~~  
5     ~~existing, or approved but unbuilt, residential or commercial~~  
6     ~~property or structure elects to install environmental enhancement~~  
7     ~~on or within that property or structure. For the purposes of this~~  
8     ~~section, environmental enhancement, as determined by the lead~~  
9     ~~agency, may include alterations to the property or structure that~~  
10    ~~reduce energy and water usage, or emissions, or both usage and~~  
11    ~~emissions. The enhancement shall not increase the square footage~~  
12    ~~of the existing, or approved but unbuilt, residential or commercial~~  
13    ~~property or structure.~~

14    ~~SEC. 2. Section 21083 of the Public Resources Code is~~  
15    ~~amended to read:~~

16    ~~21083. (a) The Office of Planning and Research shall prepare~~  
17    ~~and develop proposed guidelines for the implementation of this~~  
18    ~~division by public agencies. The guidelines shall include objectives~~  
19    ~~and criteria for the orderly evaluation of projects and the~~  
20    ~~preparation of environmental impact reports and negative~~  
21    ~~declarations in a manner consistent with this division.~~

22    ~~(b) The guidelines shall specifically include criteria for public~~  
23    ~~agencies to follow in determining whether or not a proposed project~~  
24    ~~may have a "significant effect on the environment." The criteria~~  
25    ~~shall require a finding that a project may have a "significant effect~~  
26    ~~on the environment" if one or more of the following conditions~~  
27    ~~exist:~~

28    ~~(1) A proposed project has the potential to degrade the quality~~  
29    ~~of the environment, to curtail the range of the environment, or to~~  
30    ~~achieve short-term, to the disadvantage of long-term, environmental~~  
31    ~~goals.~~

32    ~~(2) The possible effects of a project are individually limited but~~  
33    ~~cumulatively considerable. As used in this paragraph,~~  
34    ~~"cumulatively considerable" means that the incremental effects of~~  
35    ~~an individual project are considerable when viewed in connection~~

1 with the effects of past projects, the effects of other current projects,  
2 and the effects of probable future projects. In evaluating cumulative  
3 effects in an environmental impact report, the information required  
4 to be considered shall be limited to the information available at  
5 the time of the publishing of the notice of preparation.

6 ~~(3) The environmental effects of a project will cause substantial~~  
7 ~~adverse effects on human beings, either directly or indirectly.~~

8 ~~(c) The guidelines shall include procedures for determining the~~  
9 ~~lead agency pursuant to Section 21165.~~

10 ~~(d) The guidelines shall include criteria for public agencies to~~  
11 ~~use in determining when a proposed project is of sufficient~~  
12 ~~statewide, regional, or areawide environmental significance that~~  
13 ~~a draft environmental impact report, a proposed negative~~  
14 ~~declaration, or a proposed mitigated negative declaration shall be~~  
15 ~~submitted to appropriate state agencies, through the State~~  
16 ~~Clearinghouse, for review and comment prior to completion of the~~  
17 ~~environmental impact report, negative declaration, or mitigated~~  
18 ~~negative declaration.~~

19 ~~(e) The Office of Planning and Research shall develop and~~  
20 ~~prepare the proposed guidelines as soon as possible and shall~~  
21 ~~transmit them immediately to the Secretary of the Resources~~  
22 ~~Agency. The Secretary of the Resources Agency shall certify and~~  
23 ~~adopt the guidelines pursuant to Chapter 3.5 (commencing with~~  
24 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~  
25 ~~Code, which shall become effective upon the filing thereof.~~  
26 ~~However, the guidelines shall not be adopted without compliance~~  
27 ~~with Sections 11346.4, 11346.5, and 11346.8 of the Government~~  
28 ~~Code.~~

29 ~~(f) The Office of Planning and Research shall, at least once~~  
30 ~~every two years, review the guidelines adopted pursuant to this~~  
31 ~~section and shall recommend proposed changes or amendments~~  
32 ~~to the Secretary of the Resources Agency. The Secretary of the~~  
33 ~~Resources Agency shall certify and adopt guidelines, and any~~  
34 ~~amendments thereto, at least once every two years, pursuant to~~  
35 ~~Chapter 3.5 (commencing with Section 11340) of Part 1 of Division~~  
36 ~~3 of Title 2 of the Government Code, which shall become effective~~  
37 ~~upon the filing thereof. However, guidelines may not be adopted~~  
38 ~~or amended without compliance with Sections 11346.4, 11346.5,~~  
39 ~~and 11346.8 of the Government Code.~~

1     ~~SEC. 3. Section 21091 of the Public Resources Code is~~  
2     ~~amended to read:~~

3     ~~21091. (a) The public review period for a draft environmental~~  
4     ~~impact report may not be less than 30 days. If the draft~~  
5     ~~environmental impact report is submitted to the State Clearinghouse~~  
6     ~~for review, the review period shall be at least 45 days, and the lead~~  
7     ~~agency shall provide a sufficient number of copies of the document~~  
8     ~~to the State Clearinghouse for review and comment by state~~  
9     ~~agencies.~~

10    ~~(b) The public review period for a proposed negative declaration~~  
11    ~~or proposed mitigated negative declaration may not be less than~~  
12    ~~20 days. If the proposed negative declaration or proposed mitigated~~  
13    ~~negative declaration is submitted to the State Clearinghouse for~~  
14    ~~review, the review period shall be at least 30 days, and the lead~~  
15    ~~agency shall provide a sufficient number of copies of the document~~  
16    ~~to the State Clearinghouse for review and comment by state~~  
17    ~~agencies.~~

18    ~~(c) (1) Notwithstanding subdivisions (a) and (b), if a draft~~  
19    ~~environmental impact report, proposed negative declaration, or~~  
20    ~~proposed mitigated negative declaration is submitted to the State~~  
21    ~~Clearinghouse for review and the period of review by the State~~  
22    ~~Clearinghouse is longer than the public review period established~~  
23    ~~pursuant to subdivision (a) or (b), whichever is applicable, the~~  
24    ~~public review period shall be at least as long as the period of review~~  
25    ~~and comment by state agencies as established by the State~~  
26    ~~Clearinghouse.~~

27    ~~(2) The public review period and the state agency review period~~  
28    ~~may, but are not required to, begin and end at the same time. Day~~  
29    ~~one of the state agency review period shall be the date that the~~  
30    ~~State Clearinghouse distributes the document to state agencies.~~

31    ~~(3) If the submittal of a CEQA document is determined by the~~  
32    ~~State Clearinghouse to be complete, the State Clearinghouse shall~~  
33    ~~distribute the document within three working days from the date~~  
34    ~~of receipt. The State Clearinghouse shall specify the information~~  
35    ~~that will be required in order to determine the completeness of the~~  
36    ~~submittal of a CEQA document.~~

37    ~~(d) (1) The lead agency shall consider comments it receives on~~  
38    ~~a draft environmental impact report, proposed negative declaration,~~  
39    ~~or proposed mitigated negative declaration if those comments are~~  
40    ~~received within the public review period. Except in circumstances~~

1 specified in subdivision (a) of Section 21177, the lead agency shall  
2 not consider comments received after the close of the public review  
3 period.

4 ~~(2) (A) With respect to the consideration of comments received~~  
5 ~~on a draft environmental impact report, the lead agency shall~~  
6 ~~evaluate comments on environmental issues that are received from~~  
7 ~~persons who have reviewed the draft and shall prepare a written~~  
8 ~~response pursuant to subparagraph (B). Except in circumstances~~  
9 ~~specified in subdivision (a) of Section 21177, the lead agency shall~~  
10 ~~not respond to comments that are received after the close of the~~  
11 ~~public review period.~~

12 ~~(B) The written response shall describe the disposition of each~~  
13 ~~significant environmental issue that is raised by commenters. The~~  
14 ~~responses shall be prepared consistent with Section 15088 of Title~~  
15 ~~14 of the California Code of Regulations, as those regulations~~  
16 ~~existed on June 1, 1993.~~

17 ~~(3) (A) With respect to the consideration of comments received~~  
18 ~~on a draft environmental impact report, proposed negative~~  
19 ~~declaration, proposed mitigated negative declaration, or notice~~  
20 ~~pursuant to Section 21080.4, the lead agency shall accept comments~~  
21 ~~via e-mail and shall treat e-mail comments as equivalent to written~~  
22 ~~comments.~~

23 ~~(B) Any law or regulation relating to written comments received~~  
24 ~~on a draft environmental impact report, proposed negative~~  
25 ~~declaration, proposed mitigated negative declaration, or notice~~  
26 ~~received pursuant to Section 21080.4, shall also apply to e-mail~~  
27 ~~comments received for those reasons.~~

28 ~~(e) (1) Criteria for shorter review periods by the State~~  
29 ~~Clearinghouse for documents that must be submitted to the State~~  
30 ~~Clearinghouse shall be set forth in the written guidelines issued~~  
31 ~~by the Office of Planning and Research and made available to the~~  
32 ~~public.~~

33 ~~(2) Those shortened review periods may not be less than 30~~  
34 ~~days for a draft environmental impact report and 20 days for a~~  
35 ~~negative declaration.~~

36 ~~(3) A request for a shortened review period shall only be made~~  
37 ~~in writing by the decisionmaking body of the lead agency to the~~  
38 ~~Office of Planning and Research. The decisionmaking body may~~  
39 ~~designate by resolution or ordinance a person authorized to request~~

1 a shortened review period. A designated person shall notify the  
2 decisionmaking body of this request.

3 (4) A request approved by the State Clearinghouse shall be  
4 consistent with the criteria set forth in the written guidelines of  
5 the Office of Planning and Research.

6 (5) A shortened review period may not be approved by the  
7 Office of Planning and Research for a proposed project of  
8 statewide, regional, or areawide environmental significance as  
9 determined pursuant to Section 21083.

10 (6) An approval of a shortened review period shall be given  
11 prior to, and reflected in, the public notice required pursuant to  
12 Section 21092.

13 (f) Prior to carrying out or approving a project for which a  
14 negative declaration has been adopted, the lead agency shall  
15 consider the negative declaration together with comments that  
16 were received and considered pursuant to paragraph (1) of  
17 subdivision (d).

18 SEC. 4.

19 SECTION 1. Section 21177 of the Public Resources Code is  
20 amended to read:

21 21177. (a) An action or proceeding shall not be brought  
22 pursuant to Section 21167 unless the alleged grounds for  
23 noncompliance with this division were presented to the public  
24 agency orally or in writing by any person during the public  
25 comment period provided by this division. If a person can  
26 demonstrate that the alleged grounds for noncompliance relate to  
27 matters that were not known and could not have been known with  
28 reasonable diligence at the time the environmental impact report,  
29 negative declaration, or mitigated negative declaration was made  
30 available for public review, and therefore could not have been  
31 presented prior to the close of the comment period, then an action  
32 or proceeding may be brought pursuant to Section 21167 only if  
33 the alleged grounds for noncompliance with this division were  
34 presented to the public agency by the person prior to the close of  
35 *comment period provided by this division or prior to the close of*  
36 *the public hearing on the project before the issuance filing of the*  
37 *notice of determination pursuant to Sections 21108 and 21152.*

38 (b) A person shall not maintain an action or proceeding unless  
39 that person objected to the approval of the project orally or in  
40 writing during the public comment period provided by this division

1 or prior to the close of the public hearing on the project before the  
2 issuance of the notice of determination.

3 (c) This section does not preclude an organization formed after  
4 the approval of a project from maintaining an action pursuant to  
5 Section 21167 if a member of that organization has complied with  
6 subdivision (b).

7 (d) This section does not apply to the Attorney General.

8 (e) This section does not apply to any alleged grounds for  
9 noncompliance with this division for which there was no public  
10 hearing or other opportunity for members of the public to raise  
11 those objections orally or in writing prior to the approval of the  
12 project, or if the public agency failed to give the notice required  
13 by law.

14 ~~SEC. 5.—No reimbursement is required by this act pursuant to~~  
15 ~~Section 6 of Article XIII B of the California Constitution because~~  
16 ~~a local agency or school district has the authority to levy service~~  
17 ~~charges, fees, or assessments sufficient to pay for the program or~~  
18 ~~level of service mandated by this act, within the meaning of Section~~  
19 ~~17556 of the Government Code.~~